

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
BY: AMY BUSA, ESQ.
MICHAEL TREMONTE, ESQ.
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York 11201

For Defendants: JEAN GRAZIANO, ESQ.
Dimichele and 8212 Third Avenue
Garofalo Brooklyn, New York 11209

Court Transcriber: CARLA NUTTER
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: Criminal Cause for Arraignment, 10-CR-
2 147, United States v. Alicia Dimichele and Edward Garofalo.

3 Counsel, your names for the record.

4 MS. BUSA: Amy Busa for the United States. Good
5 afternoon.

6 THE COURT: Good afternoon.

7 MS. GRAZIANO: Jean Marie Graziano for both
8 defendants, Your Honor.

9 THE COURT: Good afternoon. And you're Ms.
10 Dimichele?

11 DEFENDANT DIMICHELE: Yes.

12 THE COURT: And you're Mr. Garofalo?

13 DEFENDANT GAROFALO: Yes.

14 THE COURT: All right. Good afternoon to both of
15 you.

16 Folks, you're both here because the grand jury has
17 charged each of you with -- in your case, Ms. Dimichele, two
18 crimes and in your case, Mr. Garofalo, three crimes and, Ms.
19 Dimichele, the crimes charged against you are linked to the
20 embezzlement of worker benefit funds and, Mr. Garofalo, you're
21 charged with the same crimes and also in addition, racketeering
22 and conspiracy.

23 Have you each had a chance to read the indictment
24 that sets forth the charges against you, Ms. Dimichele?

25 MS. GRAZIANO: Your Honor, I've had a chance to

1 review it with them. They haven't actually read it but we went
2 through each of the counts together.

3 THE COURT: Okay.

4 MS. GRAZIANO: And they both understand fully.

5 THE COURT: Okay. And do your clients waive a formal
6 public reading of the charges?

7 MS. GRAZIANO: Yes, they waive a formal public
8 reading and they both would like to put in a not guilty plea.

9 THE COURT: All right. Now, before we go any further
10 there are a few things that I want to make sure are on the
11 record.

12 First, the Government has already informed me that
13 they have -- in another proceeding today that they have
14 contacted or attempted to contact each of the victims in this
15 case and I don't know if you were present in the court earlier
16 when I talked about my own history as a prosecutor in this
17 district.

18 MS. GRAZIANO: Your Honor, I understand that you were
19 previously a prosecutor in this district and I no problem.

20 THE COURT: Okay. All right. Now, there's one other
21 matter of sufficiency to the case against these two defendants
22 because, Ms. Graziano, you're representing both of them and is
23 it your intention or your understanding that they will engage
24 you to represent both of them throughout the case?

25 MS. GRAZIANO: Your Honor, I've explained to them the

1 conflict issues and they've engaged me purely for the purposes
2 of today and a further bail application for Mr. Garofalo.

3 THE COURT: Okay. That's fine. Even with that
4 limited appearance though I think it's important and in fact
5 the Rules require that I discuss with you the danger of having
6 one attorney represent both of you even briefly and, believe
7 me, there have been cases where just having the same attorney
8 for two defendants in the case at this kind of proceeding right
9 at the start of the case can be a problem later.

10 One of the problems that can arise is that one of you
11 or the other will say something to the attorney that then
12 becomes useful for the other's case and the attorney then has a
13 conflict of interest in representing both of you and may have
14 to -- whoever she represents for the rest of the case, she may
15 have to withdraw.

16 So by having just the same attorney for today you may
17 find yourself without your attorney of choice later on. That's
18 one risk.

19 Another risk is however briefly you're both
20 represented by this attorney she is the only person who is
21 counseling both of you as to how you should proceed and one of
22 the choices that you may wish to consider is to go forward to
23 defend the case, pleading guilty, cooperating with the
24 Government including against co-defendants. Those are choices
25 that by their nature can affect your co-defendant's interests

1 and one attorney has inherently a problem for one attorney to
2 advise two different clients about that.

3 Ms. Dimichele, do you understand what I've just told
4 you?

5 DEFENDANT DIMICHELE: Yes.

6 THE COURT: Do you understand the risk that you're
7 taking by proceeding with your husband's attorney also
8 representing you?

9 DEFENDANT DIMICHELE: Yes.

10 THE COURT: Okay. Mr. Garofalo, do you understand?

11 DEFENDANT GAROFALO: Yes.

12 THE COURT: Now, I will make available to each of you
13 -- before we go any further today I will make available to each
14 of you separate attorneys to advise you about whether you
15 should go forward just even for this limited proceeding with
16 the same attorney. Do you understand that, Ms. Dimichele?

17 DEFENDANT DIMICHELE: Yes.

18 THE COURT: Do you wish to have a separate attorney
19 advise you? Not to represent you but just to advise you about
20 whether to have independent counsel?

21 DEFENDANT DIMICHELE: No.

22 THE COURT: Okay. Mr. Garofalo, do you understand
23 that?

24 DEFENDANT GAROFALO: Yes.

25 THE COURT: Do you wish to have independent counsel

1 on that issue?

2 DEFENDANT GAROFALO: No.

3 THE COURT: Okay. Are you both willing to proceed
4 today with the same attorney recognizing that if a problem
5 comes up later because you had the same attorney today and
6 however long you retain her you won't be able to complain about
7 it later as having lost the right to have the effective
8 assistance of counsel. You give up the possibility that you
9 can complain about that later. Ms. Dimichele, do you
10 understand that?

11 DEFENDANT DIMICHELE: Yes.

12 THE COURT: You're willing to proceed?

13 DEFENDANT DIMICHELE: Yes.

14 THE COURT: Mr. Garofalo?

15 DEFENDANT GAROFALO: Yes.

16 THE COURT: You understand and you're willing to
17 proceed?

18 DEFENDANT GAROFALO: Yes.

19 THE COURT: All right. Ms. Busa, is there anything
20 further you think I should inquire into for purposes of Rule
21 44(c)?

22 MS. BUSA: No, Your Honor.

23 THE COURT: All right. Now, I want to make sure that
24 you both understand certain rights.

25 We've been talking about the fact that you're

1 represented by an attorney. You each have the right to be
2 represented by an attorney. Do you understand that, Ms.
3 Dimichele?

4 DEFENDANT DIMICHELE: Yes.

5 THE COURT: And Mr. Garofalo?

6 DEFENDANT GAROFALO: Yes.

7 THE COURT: And as we've been discussing you've both
8 retained the same attorney. You should both understand that if
9 you find yourselves unable to afford private counsel the Court
10 will appoint counsel for each of you at no cost throughout the
11 case. Ms. Dimichele, do you understand that?

12 DEFENDANT DIMICHELE: Yes.

13 THE COURT: Mr. Garofalo, do you?

14 DEFENDANT GAROFALO: Yes.

15 THE COURT: All right. You both have the right not
16 to say anything. I don't know if you said anything to the
17 Government so far, if you have you don't need to continue. If
18 you decide later that you do wish to say something you can stop
19 at any time. You must both understand is that anything that
20 either of you says can be used against you. Do you understand
21 that, Ms. Dimichele?

22 DEFENDANT DIMICHELE: Yes.

23 THE COURT: Mr. Garofalo, do you understand that?

24 DEFENDANT GAROFALO: Yes.

25 THE COURT: Now, with respect to detention or

1 release, I understand there's an agreement -- oh, I'm sorry.
2 It's your request, Ms. Graziano, for Mr. Garofalo to hold over
3 the matter?

4 MS. GRAZIANO: Hold over until Friday, Your Honor.

5 THE COURT: Okay. I'll enter a temporary order until
6 Friday at 11:00 a.m. before Judge Gold and I understand there's
7 an agreement with respect to Ms. Dimichele?

8 MS. GRAZIANO: That's correct.

9 THE COURT: Before bringing the sureties up do you
10 want to conclude the proceedings as to Mr. Garofalo?

11 MS. BUSA: There's an application to exclude time
12 between now and March 24th.

13 THE COURT: Oh, yes. Okay. Let's take care of that
14 with both defendants.

15 Normally, the Government would have seventy days to
16 start your trial now that you've been charged. The Government
17 proposes that we don't count the time from now until March
18 24th, that's when you first appear before the trial judge,
19 against that time and that would essentially give the
20 Government an extra couple of weeks to start a trial and the
21 reasons for doing that would be to allow your attorney to have
22 plea negotiations with the Government without interfering with
23 her trial preparations. Another reason would be that this is
24 apparently going to be a very complex case to prepare for and,
25 Ms. Graziano, your clients consent to the exclusion?

1 MS. GRAZIANO: Yes, Your Honor, both clients consent.

2 THE COURT: All right. Do you both understand what I
3 just explained?

4 DEFENDANT DIMICHELE: Yes.

5 DEFENDANT GAROFALO: Yes.

6 THE COURT: Do you have any questions about it?

7 DEFENDANT DIMICHELE: No.

8 DEFENDANT GAROFALO: No.

9 THE COURT: Are you willing to have me give the
10 Government that extra time?

11 DEFENDANT GAROFALO: Yes.

12 DEFENDANT DIMICHELE: Yes.

13 THE COURT: Okay. Do you have a --

14 MS. BUSA: I provided one.

15 THE COURT: I can enter on the record it's been
16 excluded in any event as to co-defendants' voluntary -- on the
17 record my finding that's in the interests of justice to exclude
18 time from now until March 24th on the basis of complexity of
19 the case and the possibility of plea negotiations.

20 So with that why don't we take Mr. Garofalo back and
21 we can proceed with the sureties for Ms. Dimichele.

22 (Pause in proceedings.)

23 THE COURT: Ms. Graziano, do you have your sureties
24 in court?

25 MS. GRAZIANO: Yes, I do.

1 THE COURT: Why don't you bring them up.

2 (Pause in proceedings.)

3 MS. GRAZIANO: Your Honor, this is the parents of Ms.
4 Dimichele.

5 THE COURT: But their names are DeMartino.

6 MS. GRAZIANO: Yes, this is actually Alicia's
7 stepdad.

8 THE COURT: I see.

9 (John DeMartino and Gretta DeMartino, Suretors, Sworn.)

10 THE CLERK: Can you state your name for the record?

11 MR. DEMARTINO: John DeMartino.

12 MS. DEMARTINO: Gretta DeMartino.

13 THE COURT: Mr. DeMartino, what is your relationship
14 with Ms. Dimichele?

15 MR. DEMARTINO: I'm her stepdad.

16 THE COURT: Okay. And, Mrs. DeMartino?

17 MS. DEMARTINO: Her mother.

18 THE COURT: Her mother. Okay. Folks, Ms. Dimichele
19 is charged as you've heard and there's an agreement that she
20 should be released on a bond of \$50,000.00. Now, what that
21 means is she'll be at liberty until the case is resolved as
22 long as she obeys the conditions of her release. If she
23 doesn't, then she'll owe the Government \$50,000.00 and she
24 could be returned to custody but by signing the bond each of
25 you would agree to pay that same amount. So whoever the

1 Government can get it from it will go to you as well. Do you
2 understand that?

3 MR. DEMARTINO: Yes, Your Honor.

4 MS. DEMARTINO: Yes.

5 THE COURT: And they could garnish your wages if you
6 had any to get that money. Do you understand?

7 MR. DEMARTINO: Yes.

8 MS. DEMARTINO: Yes.

9 THE COURT: All right. So it's very important that
10 you understand the risk that you're taking by understanding the
11 conditions of Ms. Dimichele's release. So I'm just going to
12 ask you to listen carefully while I explain that to her.

13 Ms. Dimichele, as you've heard I'll release you on a
14 bond of \$50,000.00. You'll be at liberty as long as you obey
15 the conditions that I set. If you violate any one of these
16 conditions you could be remanded to custody and you would owe
17 the Government \$50,000.00 and the Government could get that
18 money from you or from your mother and your stepfather by
19 garnishing their wages or your wages. Do you understand that?

20 DEFENDANT DIMICHELE: Yes.

21 THE COURT: All right. So you need to understand the
22 conditions of your release.

23 First, you must return to court every time the case
24 is called. The only reason for you not to attend is if the
25 Court has explicitly told you you don't have to attend. Do you

1 understand?

2 DEFENDANT DIMICHELE: Yes.

3 THE COURT: Second, you must not commit any crime
4 while you are on release. If you commit a crime on release not
5 only will you violate the bond and you could be remanded to
6 custody but you could face additional charges for that conduct
7 and you could face increased punishment for committing a crime
8 on release. Do you understand that?

9 DEFENDANT DIMICHELE: Yes.

10 THE COURT: Next. I'm going to restrict your travel
11 to all of New York state, all of New Jersey and all of
12 Pennsylvania. You must not go outside of those three states
13 without permission from the Court. If you do it's a violation
14 of the bond. Do you understand that?

15 DEFENDANT DIMICHELE: Yes.

16 THE COURT: All right. Next. You must not have a
17 passport. So if you have a passport you must surrender it to
18 the Pretrial Services agency and you must not apply for a
19 passport while you're on release. Do you understand that?

20 DEFENDANT DIMICHELE: Yes.

21 THE COURT: Now, next, I'm going to restrict who you
22 associate with and this is going to take some explanation, in
23 part because your husband is one of the co-defendants in this
24 case. You must not have any contact or association with any
25 co-defendant in this case with the following exception;

1 obviously, you can contact and be associated with your husband
2 because he's your husband but any other co-defendant in this
3 case you must not meet with or associate with in any way at all
4 unless your attorney and the other defendants' attorney is
5 present for the meeting. Do you understand that?

6 DEFENDANT DIMICHELE: Yes.

7 THE COURT: In addition, you must not have any
8 contacts directly or indirectly with anybody who has been
9 identified as a victim or a witness or anybody who is a victim
10 or a witness in this case. Do you understand that?

11 DEFENDANT DIMICHELE: Yes.

12 THE COURT: Okay. Now, obviously, your attorney can
13 contact potential witnesses to discuss their testimony if she
14 wants to but you, yourself, can't have any contact directly or
15 indirectly. Do you understand that?

16 DEFENDANT DIMICHELE: Yes.

17 THE COURT: Okay. Do you have any questions about
18 that part of the conditions for your release?

19 DEFENDANT DIMICHELE: No.

20 THE COURT: You're also going to be under the
21 supervision of our Pretrial Services agency. They could visit
22 you at random at any time at your home or any place of work.
23 They can tell you to come to their office and you must go when
24 they tell you. Do you understand that?

25 DEFENDANT DIMICHELE: Yes.

1 THE COURT: Do you have any questions at all about
2 any of the conditions of your release?

3 DEFENDANT DIMICHELE: No.

4 THE COURT: Are you willing to obey all of them?

5 DEFENDANT DIMICHELE: Yes.

6 THE COURT: All right. Mr. and Mrs. DeMartino, did
7 you understand everything I told your daughter?

8 MR. DEMARTINO: Yes.

9 MS. DEMARTINO: Yes.

10 THE COURT: All right. Your stepdaughter, your
11 daughter.

12 Are you willing to abide by all those -- are you
13 willing to sign the bond with all those conditions?

14 MR. DEMARTINO: Yes.

15 MS. DEMARTINO: Yes.

16 THE COURT: You two should understand this is
17 voluntary. You don't have to do this if you don't want to and
18 if you decided not to do this there's no harm to you and I'll
19 simply go back to square one and figure out what should happen
20 with your daughter. Also, you can change your mind later.
21 You're taking a risk of \$50,000.00 here. If you change your
22 mind and don't want to take that risk anymore, come back to
23 court and as soon as Ms. Dimichele shows up in court we can
24 take you off the bond and you're no longer at risk.

25 Finally, you've heard me explain a number of

1 conditions to help assure me that Ms. Dimichele will come back
2 to court and that she won't commit any crimes. None of these
3 conditions will change unless you get the chance to decide
4 whether you want to take your name off the bond. Do you
5 understand that?

6 MS. DEMARTINO: Yes.

7 MR. DEMARTINO: Yes.

8 THE COURT: Ms. Graziano, please don't ask for a
9 modification of the bond without getting the consent of these
10 sureties first.

11 Any questions?

12 [No verbal response.]

13 THE COURT: Let's have everybody sign, please.

14 [Pause in proceedings.]

15 THE COURT: And is the Government content to have me
16 sign the release order at this point?

17 MS. BUSA: Yes, Your Honor.

18 THE COURT: Is there anything else?

19 MS. BUSA: No, Your Honor.

20 THE COURT: All right. Thank you all.

21 * * * * *

22

23

24

25

1

* * * * *

2

I certify that the foregoing is a transcript from an
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

Carla Nutter

5

6

CARLA NUTTER

7

8

Dated: March 17, 2010

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25